

1
2
3
4
5
6
7
UNITED STATES FEDERAL DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
8

9
10 RUTHANNA SHIRLEY,
11 JOHNATHAN HONE, CARLY
12 PETERS, CHARLES FRADY,
13 MARCUS SANCHEZ, MORGAN
14 WINES, SAMUEL KOLB,
15 STEPHEN J. ANDERSON,
16 THOMAS MOATS, TRENTON DE
17 BOER, DONALD BRADLEY
18 ALLEN, JOSHUA BELTZ, ERIC
19 OSWALD,
20
21 Plaintiffs,
22
23 vs.
24

25 WASHINGTON STATE
26 DEPARTMENT OF FISH AND
27 WILDLIFE, a Washington State
28 Governmental Agency; KELLY
29 SUSEWIND, an individual, AMY
30 WINDROPE, an individual, LONNIE
31 SPIKES, an individual, STEVE
32 BEAR, an individual, CRAIG
33 BURLEY, an individual,
34

35 Defendants.
36

37 **CASE NO. 3:23-cv-05077**

38 **COMPLAINT**

39 **JURY DEMANDED**

I. INTRODUCTION

1. Plaintiffs are thirteen (13) former State employees who were wrongfully denied accommodations and terminated for non-compliance with a new State requirement for COVID-19 vaccination, in violation of their Constitutional and statutory rights. Plaintiffs come to this Court to be made whole.

II. PARTIES

2. Defendant Washington State Department of Fish and Wildlife (“WDFW” or the “Department”) is a governmental agency of the State of Washington.
3. Defendant Kelly Susewind is Director of the Department, and is an employer, officer, vice principal and/or agent for purposes of Wash. Rev. Code § 49.52.070; upon information and belief, Defendant Susewind performed the acts and omissions complained of herein to advance his career and/or for his personal benefit and the benefit of his marital community.
4. Defendant Amy Windrope is Deputy Director of the Department, and is an employer, officer, vice principal and/or agent for purposes of Wash. Rev. Code § 49.52.070; upon information and belief, Defendant Windrope performed the acts and omissions complained of herein to

1 advance her career and/or for her personal benefit and the benefit of her
2 marital community.

3 5. Defendant Lonnie Spikes is Director Human Resources with WDFW,
4 and is an employer, officer, vice principal, and/or agent for purposes of
5 Wash. Rev. Code § 49.52.070; upon information and belief, Defendant
6 Spikes performed the acts and omissions complained of herein to
7 advance his career and/or for his personal benefit and the benefit of his
8 marital community.

9 6. Defendant Steve Bear, Chief of WDFW Police, and is an employer,
10 officer, vice principal, and/or agent for purposes of Wash. Rev. Code §
11 49.52.070; upon information and belief, Defendant Bear performed the
12 acts and omissions complained of herein to advance his career and/or
13 for his personal benefit and the benefit of his marital community.

14 7. Defendant Craig Burley, Department Deputy Director for Fish
15 Program, and is an employer, officer, vice principal, and/or agent for
16 purposes of Wash. Rev. Code § 49.52.070; upon information and belief,
17 Defendant Burley performed the acts and omissions complained of
18 herein to advance his career and/or for his personal benefit and the
19 benefit of his marital community

20
21
22
23
24

1 8. Plaintiff Ruthanna Shirley was a Fish and Wildlife Biologist 2, who
2 during employment with the Department was a resident of Washington
3 State, and who was granted a religious exemption from the
4 Department's vaccination requirement but was wrongfully denied an
5 accommodation and was terminated by the Department. Ms. Shirley
6 had verifiable natural immunity through a positive antibody test and
7 performed her job primarily outdoors with supervisory responsibilities
8 and data analysis responsibilities easily performed remotely.

9 9. Plaintiff Johnathan Hone was a Fish and Wildlife Biologist 2, who
10 during employment with the Department was a resident of Washington
11 State, was granted a religious exemption from the Department's
12 vaccination requirement, but was wrongfully denied an accommodation
13 and was terminated by the Department. Mr. Hone's job was performed
14 primarily outdoors with supervisory responsibilities and data analysis
15 responsibilities easily performed remotely.

16 10. Plaintiff Carly Peters was a Fish and Wildlife Police Officer, who
17 during employment with the Department was a resident of Washington
18 State, and who was granted both a religious and medical exemption
19 from the Department's vaccination requirement but was wrongfully
20 denied an accommodation and was terminated by the Department. Ms.
21
22
23
24

1 Peters had verifiable natural immunity and performed her job entirely
2 outdoors alone in her patrol vehicle.

3 11. Plaintiff Charles Frady was a Fish and Wildlife Biologist 3, who during
4 employment with the Department was a resident of Washington State,
5 and who was granted both a religious and medical exemption from the
6 Department's vaccination requirement but was wrongfully denied an
7 accommodation and was terminated by the Department. Mr. Frady's
8 job was performed primarily outdoors with supervisory and data
9 analysis responsibilities easily performed remotely, and he had both
10 verifiable natural immunity as confirmed through a positive antibody
11 test and a positive COVID-19 test.

12 14. Plaintiff Marcus Sanchez was a Fish and Wildlife Police Officer, who
15 during employment with the Department, was a resident of Washington
16 State, and who was granted a religious exemption from the
17 Department's vaccination requirement but was wrongfully denied an
18 accommodation and was terminated by the Department. Mr. Sanchez's
19 work was performed primarily outdoors alone in his patrol vehicle.

20 21. Plaintiff Morgan Wines was a Fish and Wildlife Police Officer, who
22 during employment with the Department was a resident of Washington
23 State, and who was granted a religious exemption from the

1 Department's vaccination requirement but was wrongfully denied an
2 accommodation and terminated by the Department. Ms. Wines
3 performed her work primarily outdoors, alone, in her patrol vehicle, and
4 has verifiable natural immunity as confirmed through a positive
5 COVID-19 antibody test.
6

7 14. Plaintiff Samuel Kolb was a Fish and Wildlife Biologist 3, who during
8 employment with the Department was a resident of Washington State,
9 and who was granted a religious exemption from the Department's
10 vaccination requirement but was wrongfully denied an accommodation
11 and terminated by the Department. Mr. Kolb worked outdoors but was
12 told he was denied an accommodation because he would have to meet
13 with his supervisor indoors.
14

15. Plaintiff Stephen J. Anderson was a Fish and Wildlife Technician 2,
16 who during employment with the Department was a resident of
17 Washington State, and who was granted a religious exemption from the
18 Department's vaccination requirement but was wrongfully denied an
19 accommodation and terminated by the Department. Mr. Anderson
20 worked almost exclusively outdoors.
21

22. Plaintiff Trenton De Boer was a Fish and Wildlife Biologist 2, who
23 during employment with the Department was a resident of Washington
24

1 State, and who was granted a religious exemption from the
2 Department's vaccination requirement but was wrongfully denied an
3 accommodation and terminated by the Department. Mr. De Boer
4 worked primarily outdoors with supervisory and data analysis
5 responsibilities which could easily be performed remotely.
6

7 17. Plaintiff Thomas Moats was a Fish and Wildlife Police Officer, who
8 during employment with the Department was a resident of Washington
9 State, and who was granted a religious exemption from the
10 Department's vaccination requirement but was wrongfully denied an
11 accommodation and terminated by the Department. Mr. Moats worked
12 primarily outdoors alone in his patrol vehicle and had demonstrable
13 natural immunity confirmed through a positive COVID-19 test.
14

15 18. Plaintiff Donald B. Allen was a Fish and Wildlife Scientific Technician
16 3, who during employment with the Department was a resident of
17 Washington State, and who retired prematurely under duress after he
18 was told by the Department that there were no accommodations
19 available and that he would lose his pension if he did not resign. Mr.
20 Allen worked almost exclusively outdoors and alone.
21

22 19. Plaintiff Joshua Beltz was a Fish and Wildlife Police Officer, who
23 during employment with the Department was a resident of Washington
24

State, and who was granted a religious exemption from the Department's vaccination requirement but was wrongfully denied an accommodation and terminated by the Department. Mr. Beltz worked primarily outdoors and alone in his patrol vehicle.

20. Plaintiff Eric Oswald is Fish and Wildlife Police Sergeant, who during employment with the Department was a resident of Washington State, was granted a religious exemption but wrongfully denied an accommodation and terminated by the Department. Mr. Oswald worked alone in his patrol vehicle and worked half his time outdoors and half his time performing administrative duties, which he could easily perform remotely in his patrol vehicle and, in fact, did perform those duties remotely, as he was expected to be in the field and only minimal office time only if needed.

III. JURISDICTION AND VENUE

21. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1343.
22. Venue is proper in this Court under 28 U.S.C. § 1391 where the Department is headquartered within this District and, independently, where Defendant Windrope is a resident of this District.
23. In compliance with Wash. Rev. Code § 4.92.100, Plaintiffs have submitted Tort Claims with the Washington State Office of Risk

1 Management; sixty days have passed since that submission, during
 2 which all statutes of limitations were tolled pursuant to Wash. Rev.
 3 Code § 4.92.110.

4 **IV. FACTS**

5 24. Plaintiffs were employed by the Department until they were wrongfully
 6 terminated on or about October 18, 2021.¹

7 25. During 2020, several experimental vaccines were developed to limit the
 8 effects of COVID-19.

9 26. These vaccines were developed quickly to protect those who were at
 10 highest risk of getting seriously ill from COVID-19, especially the
 11 elderly and those with multiple co-morbidities.

12 27. Pfizer officials have admitted that its vaccine was not tested for efficacy
 13 at preventing transmission or infection.

14 28. It is now universally admitted that the vaccinated can contract and
 15 transmit COVID-19.

16 29. Recorded “breakthrough” cases (fully vaccinated individuals
 17 contracting COVID-19) in Washington State from July 17, 2021, to
 18 July 9, 2022, alone totaled 636,766.

22
 23 ¹ Plaintiffs were required to turn in equipment, badges, computer, etc, on October 18, 2021, and were then put on leave
 24 without pay while Defendants allegedly conducted a termination process, with an “official” termination date sometime
 after the October 18, 2021 date. Official termination dates vary, but effectively each was terminated on or about
 October 18, 2021.

1 30. Nevertheless, on August 9, 2021, Governor Inslee issued Proclamation
2 21-14 (with amendments 21-14.1 on August 20, 2021, and 21-14.2 on
3 September 27, 2021, the “Proclamation”).
4
5 31. The Proclamation provided that “State agencies...**must** provide any
6 disability-related reasonable accommodations and sincerely held
7 religious belief accommodations to the requirements of this Order that
8 are required under the American with Disabilities Act of 1990 (ADA),
9 the Rehabilitation Act of 1973 (Rehabilitation Act), Title VII of the
10 Civil Rights act of 1964 (Title VII), the Washington Law Against
11 Discrimination (WLAD), and any other applicable law.” (emphasis
12 added).
13
14 32. Proclamation 21-14.2 likewise provided that state agencies “**must**
15 **comply** with the procedures required under the above-noted laws and
16 any other applicable laws when considering and deciding whether to
17 provide accommodations.” (emphasis added).
18
19 33. Under both Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq.*,
20 and the Washington Law Against Discrimination, Wash. Rev. Code.
21 49.60 (“WLAD”), any employer’s restrictions of employees’
22 constitutional rights must be narrowly tailored to further a compelling
23 government interest.
24

1 34. The Washington State vaccine mandate imposed by the Proclamation
2 was continuously and zealously enforced, despite a plethora of
3 admissions by government officials and scientists that the vaccines did
4 not stop transmission or infection of the virus, and thus the mandate
5 could not further the goal of stopping the spread of COVID-19.
6

7 35. Pursuant to Proclamation 21-14, Defendants demanded their employees
8 be vaccinated or be terminated.

9 36. Defendant Susewind stated in an “All Staff Teams Video Meeting” on
10 August 12, 2021, that the Proclamation applied to WDFW, “that all our
11 staff need to be fully vaccinated by October 18th,” that “our bottom line
12 for us is that this is a *nondiscretionary act we have to implement....*”
13 and that “we don’t have a lot of choice or latitude, but you have a
14 commitment from me and [Defendant] Amy [Windrop] to support
15 staff in any way we can and to do this in as compassionate of a way as
16 we can.”
17

18 37. Defendant Susewind likewise stated he would “do this in as empathetic
19 and supportive way as we can, but I also get to be the one to dump the
20 cold water, too. We have to comply with the Proclamation and it says
21 that you as a worker are prohibited from working after October 18th and
22

1 we as employer, or state agencies, are prohibited from allowing you to
2 work after the 18th...”

3 38. Defendant Susewind likewise stated in that same meeting that “as
4 agency administrators we don’t get to question the logic on this one.
5 We’ve checked with our attorneys [at OFM], we’re told it’s legal, we
6 have to follow it, and so...I am feeling sorry for [Defendant] Amy
7 taking all the heat here...”

8 39. Defendant Susewind fundamentally misrepresented the terms of
9 Proclamation 21-14, as it did not demand vaccination with no ability to
10 work but required agencies to comply with all state and federal law,
11 specifically citing ADA, the Rehabilitation Act, Title VII, WLAD, and
12 any other applicable law.” Proclamation 21-14, *supra*.

13 40. Defendant Susewind authorized the failure to perform an interactive
14 process compliant with those federal and state laws but instead made
15 the predetermined decision that nothing other than vaccination would
16 assure compliance with the Proclamation.

17 41. Many employees of Defendants, including numerous Plaintiffs,
18 questioned Defendants regarding the known fact that the vaccine did
19 not stop transmission or infection.

20

21

22

23

24

1 42. Defendants refused to acknowledge any such information presented to
2 them by Plaintiffs.

3 43. In August–September 2021, each Plaintiff completed and submitted a
4 request for religious exemption, and in some cases also for medical
5 exemption, from the Department’s new employee vaccination
6 requirement.

7 44. The Department correctly found that each Plaintiff had a sincerely held
8 religious belief that prevented them from receiving the COVID-19
9 vaccination, and/or had a medical exemption that prevented
10 vaccination, and the Department therefore granted each Plaintiff a
11 nominal exemption from the vaccination requirement.

12 45. Even though each Plaintiff worked primarily outdoors, which
13 significantly reduces any risk of viral transmission, the Department
14 refused to consider outdoor work as an accommodation to the
15 vaccination requirement.

16 46. Neither the Department nor any of the individual Defendants can
17 articulate any undue hardship in accommodating any of the Plaintiffs.

18 47. Independently, the Department could not, and cannot, articulate a
19 relative undue hardship in accommodating the Plaintiffs, as balanced
20 against the negative impact on the Department of incurring staffing
21
22
23
24

1 shortages. The Department's actions in refusing to accommodate
2 Plaintiffs has resulted in undue hardships to the citizens of Washington,
3 the environment, and the mission of the Agency.

4 48. Defendants, after the termination of religious and/or medical exempted
5 employees without accommodation, adopted a policy authorizing the
6 use of unvaccinated volunteers to help fill the extraordinary loss of
7 experience and manpower caused by the mass termination. This policy
8 demonstrates an arbitrary and capricious policy that terminates
9 religious and medical objectors for no vaccination, ostensibly to
10 prevent the spread of COVID-19, then authorizes the use of
11 unvaccinated volunteers to enter the workplace carrying that same
12 alleged risk.

13 49. In fact, Plaintiff Allen was specifically requested to become a volunteer
14 and return to his old job unpaid, even in his unvaccinated status.

15 50. Plaintiff Shirley has been ridiculed, harassed, ostracized, and degraded
16 by Defendants upon her return to her job after reinstatement.

17 51. In fact, on Ms. Shirley's first day back at work after her successful
18 Arbitration Order reinstating her with backpay, Defendant Spikes
19 facilitated and furthered a hostile work environment when he ordered
20 Ms. Shirley to remove two balloons and flowers that had been placed
21
22
23
24

1 on her desk anonymously from co-workers welcoming her return.
2 Defendant Spikes alleged to other employees that there was a complaint
3 from someone but did not reveal the nature of the complaint or the
4 reason flowers and balloons were offensive.

5

6 52. Defendant Spikes ordered Plaintiff Shirley to immediately carry the
7 balloons and flowers to her vehicle, in front of her colleagues, with the
8 specific intent to embarrass and humiliate Ms. Shirley.

9 53. Other employees acting under authority from Defendants furthered that
10 hostile work environment by chastising employees who acknowledged
11 in a positive way Ms. Shirley's imminent reinstatement and return to
12 the office.

13 54. Plaintiff Shirley's vaccination status has likewise been revealed to
14 those who would have no way of knowing that information unless
15 Defendants violated Ms. Shirley's privacy and disclosed that private
16 medical information without her consent, which is a violation of federal
17 law.

18 55. Defendants also held discussions of Plaintiffs' private vaccination
19 status at numerous in-person Regional Management Team meetings
20 with eight or more individuals in attendance, which had no relevance
21 to the issues being discussed.

22

23

24

1 56. Defendant Burley also created a hostile work environment. Defendant
2 Burley had been the individual who gave approval for many of the
3 separation letters, including, but not limited to Plaintiff Shirley's
4 separation letter dated November 29, 2021, which resulted in her
5 termination on December 10, 2021. Defendant Burley gave approval
6 for the denial of accommodations in letters sent to the Department's
7 HR.

8 57. Defendant Burley called Plaintiff Shirley's supervisor, Eric Winther,
9 on December 6, 2022, shortly after Ms. Shirley's reinstatement was
10 publicly announced, telling Mr. Winther that other people in the
11 Department were allegedly not excited about Ms. Shirley's
12 reinstatement and pending return to her job.

13 58. Defendant Burley told Mr. Winther that he had been made aware that
14 Ms. Shirley's program colleagues were organizing an alleged return
15 party for her return, and Mr. Winther was ordered to prohibit or cancel
16 such an event.

17 59. Defendant Burley also manipulated facts regarding Plaintiff Shirley and
18 Hone's timesheets to initiate an investigation against Mr. Winther. The
19 investigation concluded that Mr. Winther had done nothing improper.

20

21

22

23

24

1 60. Such action was taken for discriminatory and harassment purposes
2 against Plaintiffs Shirley and Hone.

3 61. Defendants have continued to discriminate against Ms. Shirley with no
4 compelling reason by mandating that she wear a mask and social
5 distance, despite no other individuals having to wear a mask or social
6 distance, in contradiction to CDC policy to treat the vaccinated and
7 unvaccinated alike.

8 62. Plaintiff Shirley has been told that any violation of her accommodation
9 to social distance and wear a mask could result in her immediate
10 termination. This threat of noncompliance has required Ms. Shirley to
11 proclaim to coworkers who wanted to hug her upon her return to the
12 office that she was not allowed any contact closer than six feet. No one
13 else in the office is wearing a mask or social distancing.

14 63. Plaintiffs fear this same retaliatory and hostile work environment
15 awaits them upon their potential return to their jobs.

16 64. Defendant WDFW has a culture of harassment, bullying, and
17 unprofessional conduct that was the subject of a special Performance
18 Audit by the Office of Washington State Auditor, Pat McCarthy,
19 published September 13, 2021. The Audit concluded that there were
20 “real concerns about different forms of unprofessional behavior,
21
22
23
24

1 communication breakdowns across the agency, and a general lack of
2 confidence in management's ability to address issues."

3 65. Moreover, the Audit concluded that "[e]mployees described
4 widespread unprofessional behavior that has not been successfully
5 addressed, lessening trust in agency leadership."

6 66. Some of the Plaintiffs endured humiliating comments and opinions
7 from Defendants who voluntarily injected their opinions and attitudes
8 into what should have been a private medical and faith decision
9 between Plaintiffs, their God, their health care provider, and their
10 families.

11 67. Several Plaintiffs were denied medical exemptions from doctors and
12 were routinely told by health care providers that they could not sign
13 medical exemptions for fear of retaliation by the State.

14 68. Plaintiff Peters was nursing a newborn baby and requested a medical
15 exemption based on the unknown effects of the vaccine on her child,
16 which was granted by Defendants. Defendant Bear stated during
17 "coffee chat" TEAMS meetings that Officers were dying from COVID
18 because they were not vaccinated, and that vaccination was like
19 "wearing a seat belt," but he told Ms. Peters that he would not
20 recommend his wife getting the shot if she were nursing.

1 69. Defendant Bear also told Ms. Peters that his “AG rep,” presumably his
2 Human Resources point of contact within the Attorney General’s
3 Office, and Defendant Bear both agreed with each other that if their
4 wives were nursing, they would not recommend taking this vaccine.
5 Defendant Bear signed Ms. Peter’s letter notifying her of her
6 termination. Ms. Peters was still nursing her child at that time.

7 70. Defendant Bear likewise directly pressured Morgan Wines specifically,
8 as well as others, through guilt and shame to take the vaccine, stating
9 that his daughter was a nurse and knew that COVID was killing people.
10 Defendant Bear also sent lengthy numerous emails to Plaintiff WDFW
11 police officers about how the virus was killing officers and that the
12 vaccine would solve the issue.
13
14 71. This unrelenting pressure to change their choices was a wrongful
15 intrusion into Plaintiffs’ private decisions.
16
17 72. At least thirteen individuals working for WDFW, including Plaintiffs
18 Shirley, Kolb, and Hone, were officially granted an accommodation,
19 approved by their supervisors, to continue to work outdoors with
20 specific personal protective equipment, (“PPE”), but then Defendant
21 Windrope rescinded 13 accommodations without reason, justification,
22
23
24

1 or explanation, and demanded the exempt employees receive
2 vaccination.

3 73. Several Plaintiffs, including Mr. Allen, were told by Defendants that
4 there would be no accommodation and that applying for an exemption
5 was a pointless and futile process.

6 74. Plaintiff Allen was told by the Department that if he did not retire or
7 voluntarily quit, he would lose retirement benefits.

8 75. Plaintiff Allen was forced to retire, but within two weeks he was asked
9 by an employee of WDFW to check some traps that were part of his
10 regular duties even though he was no longer employed.

11 76. Plaintiff Allen was also specifically solicited in writing to “volunteer”
12 with WDFW, with WDFW knowing full well his unvaccinated status
13 and his forced retirement.

14 77. Defendants continued to reach out to Plaintiff Allen for months after
15 his forced retirement to answer questions related to the job Mr. Allen
16 performed.

17 78. Plaintiffs did not receive an individualized assessment or interactive
18 dialogue to discuss accommodation options prior to the Department’s
19 decision to terminate them.

1 79. This is shown by, at least, the Department's granting of exemption and
2 denial of accommodation only a few days after certain Plaintiffs
3 applied, without any discussion with those Plaintiffs.
4

5 80. The Department's failure to provide an individualized assessment
6 through an interactive dialogue was in violation of the Proclamation
7 itself, and of Plaintiffs' constitutional rights and rights under Title VII
8 and WLAD.
9

10 81. As stated, by early to mid- 2021, it had become clear that the COVID-
11 19 vaccines developed by Pfizer, Moderna and Johnson & Johnson did
12 not prevent recipients from being infected with, or spreading, COVID-
13 19.
14

15 82. Thus, unlike polio or smallpox vaccines, the COVID-19 vaccines did
16 not eliminate infection and could not end transmission of the virus.
17

18 83. Many studies confirmed this fact, including studies from the Centers
19 for Disease Control ("CDC"), upon whom Defendants allegedly relied.
20

21 84. The single benefit of the COVID-19 vaccine, as even the government
22 admits, is to protect an infected, vaccinated person from severe illness
23 or death, but even that benefit is disputed, and wanes over time to the
24 extent it exists at all.

1 85. Defendants denied accommodations to Plaintiffs based entirely on
2 Plaintiffs' general job descriptions and did not have any individualized
3 and interactive discussion with the Plaintiffs prior to the decision to
4 terminate.

5 86. In some instances, job descriptions which were relied upon by
6 Defendants had not been updated in years. For instance, Mr. Hone's
7 job description was nearly 20 years outdated and had not been updated
8 since 2003, and Ms. Shirley's job description had not been updated
9 since 2017.

10 87. Even Plaintiffs who had supervisory responsibilities which they had
11 always performed remotely were told they could no longer perform
12 those duties remotely and would have to supervise co-workers in
13 person. Therefore, Defendants claimed no accommodation could be
14 made for supervisors, as a blanket rule.

15 88. Likewise, Plaintiffs who had often met with their own supervisors
16 remotely before COVID-19 were told they could no longer do so and
17 had to conduct any interaction with their supervisor in person, and thus,
18 could not be accommodated.

19 89. Defendants purposefully fashioned this new requirement with the end
20 goal of denying exempt employees reasonable accommodations which
21

22

23

24

1 posed no undue burden and had, in fact, been normal operating
2 procedure prior to the onset of the COVID-19 pandemic.

3 90. Plaintiffs were denied *Loudermill* hearings.

4 91. Defendants identified no undue hardship that prevented the
5 accommodation of Plaintiffs.

6 92. Plaintiffs were told by Defendants that that they posed a “significant
7 risk of harm” in their unvaccinated state such that “no accommodation
8 could be identified to eliminate or reduce the risk of infection” to
9 vaccinated co-workers or the public with which they might come into
10 contact.

11 93. Defendants did not identify what that significant risk of harm was.

12 94. Defendants refused to accommodate Plaintiffs based on purely
13 speculative harm regarding Plaintiffs’ *potential* public interaction,
14 regardless of whether there had been any such public interaction in the
15 past, and regardless of whether any minimal *potential* exposure which
16 might become necessary could be accommodated through the use of
17 personal protective equipment (“PPE”).

18 95. Defendants denied accommodations knowing that all the Plaintiffs
19 worked outdoors and alone all or nearly all the time.

1 96. Defendants were aware at the time of termination of Plaintiff that the
2 COVID-19 vaccines did not protect against infection and were
3 therapeutic, at best.

4 97. Defendants were told directly by some Plaintiffs that numerous
5 published studies concluded that the vaccines did not prevent infection,
6 which Defendants chose to ignore.

7 98. There were many published studies, even by the CDC, documenting the
8 catastrophic failure of the vaccine that were released prior to the
9 October 18, 2021, termination date.

10 99. Defendants refused to answer Plaintiffs' inquiries regarding how
11 Plaintiffs posed any greater "risk of harm" vaccinated than
12 unvaccinated, given the abject failure of the vaccines to prevent
13 infection and transmission, and given these studies.

14 100. As noted *supra*, many Plaintiffs presented a positive COVID-19
15 antibody test and/or a positive COVID-19 test, but Defendants refused
16 to consider this evidence of natural immunity as a point in favor of
17 accommodating exempt employees. These positive tests were historical
18 and were presented after full recovery.

19 101. Defendants also refused to consider accommodating Plaintiffs by
20 letting them use PPE on the job, even though all Plaintiffs had already
21

22 24

1 worked nearly 18 months successfully utilizing PPE and social
 2 distancing to avoid infection.

3 102. Defendant provided no evidence of any COVID-19 transmissions at
 4 any time which could be traced to any Plaintiff.

5 103. The particular egregious nature of the terminations of Plaintiffs is
 6 evidenced by the stellar performance record of each in the performance
 7 of their jobs. For example, as a supervisor, Plaintiff Shirley was
 8 awarded the Leadership Through COVID award in Region 5 in
 9 September 2020, the first award of its kind, for her ability to lead her
 10 team through COVID teleworking, but then was terminated a year later
 11 and denied the ability to telework.

14 104. Plaintiff Hone and Plaintiff Shirley both received the Public
 15 Engagement Award for the Pikeminnow program they supervised for
 16 their exemplary performance navigating the pandemic.

17 105. The Department operated under a 2014 “declaration” by Governor
 18 Inslee² that encouraged telework and sought to increase the remote
 19 public service workforce to 40% by 2017.

21 **Arbitration Decisions and Awards**

24

² See Executive Order 14-02.

1 106. Most of the Plaintiffs have filed grievances for Union arbitration and
2 have either received favorable decisions awarding backpay and
3 reinstatement or are waiting arbitration of their individual grievances.³

4 107. Plaintiffs Shirley and Hone each received an Arbitrators' Decision and
5 Award of reinstatement and backpay due to their wrongful termination.
6 A copy of those decisions by two different arbitrators, are attached as
7 Exhibits A (Shirley) and B (Hone) to this Complaint and incorporated
8 as if fully set forth herein.

9 108. Nonparty Tyler Kave was also successful at arbitration, with the
10 Arbitration Opinion attached as Exhibit C to this Complaint and
11 incorporated as if fully set forth herein.

12 109. Specifically, those Arbitration decisions found that the Department (1)
13 did not make a good faith effort, under established case law, to find a
14 reasonable accommodation before asserting an undue hardship, (2) did
15 not establish an undue hardship because it's [sic] conclusions were
16 unsupported by the evidence, and (3) violated the Proclamations and
17

18
19
20
21
22
23 ³ One Plaintiff has an arbitration through WAFWP scheduled for March 14, 2023; five (5) Plaintiffs have arbitrations
24 through FWOG scheduled for February or March 2023; one (1) Teamsters arbitration is tentatively scheduled for end
of March-beginning of April 2023; and four (4) Plaintiffs did not file a grievance of any sort. Two Plaintiffs, Shirley
and Hone, have won arbitrations and Defendants were ordered to reinstate them with backpay and loss of benefits.

1 Title VII.” Exhibit A, Arbitration Decision and Award for Ruthanna
2 Shirley (“Shirley Decision”).

3 110. The Shirley Decision found that the Department did not consider masks
4 and social distancing as accommodations and that “[f]ailing to
5 consider available accommodations is extremely concerning. It is
6 difficult for the Agency to establish good faith when EEOC and/or CDC
7 guidance is ignored and not considered.” Exhibit A at 36 (emphasis in
8 original).

9 111. The Shirley Decision further held that, “[t]here is nothing in the
10 evidence to indicate that the Agency considered testing or any
11 alternative accommodation to vaccination.” *Id.* at 37.

12 112. The Shirley Decision specifically addressed Defendant Windrope’s
13 having “rescind[ed] 13 reasonable accommodations that were
14 approved,” because they allegedly “did not comport with the guidance
15 that we developed to ensure a safe workplace.” *Id.* at 39. Ms. Windrope
16 “did not take this opportunity to explain with specificity,” why masks
17 and social distancing were no longer a reasonable accommodation.

18 113. The Shirley Decision disparaged Defendant Windrope for sending
19 letters with subject line “Guidelines for Review of Reasonable
20 Accommodations relative to the Governor’s Proclamation 20-05, as
21

1 well as an email regarding “Vaccine Mandate Update,” neither of which
2 discuss masks and social distancing as a reasonable accommodation,
3 and do not disclose any guidance from OFM. *Id.* at 39.

4 114. “The position taken by the Agency constituted a hypothetical hardship
5 in violation of Title VII because it was conclusory and unsupported by
6 data and other statistical evidence.” *Id.* at p. 40.

7 115. “There is **nothing in the exhibits and testimony** to indicate what type
8 of guidance the Agency received not just from the Office of Financial
9 Management, but also the Center for Disease Control and the
10 Department of Health. Again, without specifics as to what guidance
11 was provided, it is difficult to determine” whether an accommodation
12 is an undue hardship.” *Id.* at p. 41 (emphasis in original)

13 116. The Hone Arbitration Decision and Award (“Hone Decision”), Exhibit
14 B, likewise ordered reinstatement and backpay.

15 117. The Hone Decision found that prior to Defendant Windrope’s decision
16 to rescind 13 accommodations she had already granted, the Plaintiffs
17 had received a satisfactory accommodation process and “individualized
18 consideration.” Exhibit B at 9.

19 118. The Hone Decision found it was Defendant Windrope who made the
20 decision to “rescind” the reasonable accommodations provided to
21

1 Plaintiffs, resolving the question of whether the accommodations had
2 been initially approved or not. *Id.* at 9.

3 119. The Hone Decision specifically found that Defendants failed to follow
4 the interactive process and that such failure could not be excused. *Id.* at
5 10.

6 120. The Hone Decision also rejected Defendants' assertion that "in effect,
7 no inquiry into an individuals' work situation – beyond evaluating a job
8 description – was necessary." *Id.* at 10-11.

9 121. The Hone Decision likewise rejected that supervisors had to meet with
10 employees under their supervisory umbrella and that the work could not
11 be done remotely. *Id.* at 13-14.

12 122. The Hone Decision found that "the Department failed to afford [Mr.
13 Hone] the individualized consideration of his religious accommodation
14 request that is required by law and by the parties' MOU. In addition,
15 at least as applied to Mr. Hone, The Department's *per se* rule against
16 masking and distancing as part of an appropriate religious
17 accommodation violated the law and the MOU." *Id.* at 16.

18 123. Non-party Tyler Kave was similarly successful at arbitration against the
19 Department. Exhibit C.

1 124. The Kave Arbitration decision likewise found Defendants did not
2 provide a legal accommodation process before terminating Mr. Kave.

3 Exhibit C at 25.

4 125. Despite its universal failure to defend its conduct at arbitration, the
5 Department refuses still to reinstate and pay wages withheld.

6 126. The arbitration awards, among other issues, are conclusive evidence
7 that the Department's withholding of wages has been knowingly
8 wrongful for purposes of Wash. Rev. Code § 49.52.070.

9 127. The arbitration awards are *res judicata* in favor of Plaintiffs Shirley and
10 Hone, and also collaterally estop Defendants as to all other Plaintiffs,
11 where the Department treated all Plaintiffs in the same manner as
12 Shirley, Hone, and Kave.

13 128. Despite these three consistent and binding arbitration decisions, the
14 Department has refused to reinstate others similarly situated, including
15 the other Plaintiffs.⁴

16 129. The Department initially refused to adhere to, and take action
17 regarding, at least one of these three binding arbitration decisions, for

23 ⁴ Defendants have yet to follow the arbitration order with respect to Plaintiff John Hone, who still has not been
24 reinstated, nor received backpay. Mr. Hone is likewise fearful of reentering the same hostile work environment
currently faced by Plaintiff Shirley.

which it made no cognizable excuse, stating merely that it “did not want to” reinstate the individual.

130. The vaccines were known by the State of Washington to not prevent the transmission of COVID-19 *prior* to October 18, 2021. Attached as Exhibit D is a true and correct copy of an email between state and county health officials discussing breakthrough cases traced to a staff party from July 2021. Attached as Exhibit E is a true and correct copy of an email chain between state and county officials discussing the “concerning” trend of escalating rates of reinfection of vaccinated individuals in July 2021. Attached as Exhibit F is a true and correct copy of an email from Jeff Duchin, Professor of Medicine at the University of Washington and Chief, Communicable Disease Epidemiology and Immunization Section, Public Health, Seattle and King County, regarding ability of vaccinated to both reinfect and spread to others.

V. CAUSES OF ACTION AGAINST THE DEPARTMENT

FIRST CAUSE OF ACTION

Violation of Washington Law Against Discrimination Perceived Physical Disability

131. Plaintiffs here reallege the allegations set forth above in this Complaint as if fully set forth herein.

1 132. The Washington Law Against Discrimination (“WLAD”) prohibits
2 discrimination in the workplace for actual or perceived disability.
3 Wash. Rev. Code § 49.60.180. *Taylor v. Burlington Northern Railroad*
4 *Holdings*, 193 Wash.2d 611 (2019) (en banc).
5

6 133. WLAD’s definition of disability is broader than the definition in the
7 ADA. *Pulcino v. Fed. Express Corp.*, 141 Wash.2d 629, 641 n.3 (2000).
8

9 134. A disability is defined as “a sensory, mental, or physical impairment
10 that ... (i) [i]s medically cognizable or diagnosable; or (ii) [e]xists as a
11 record or history; or (iii) [i]s *perceived* to exist whether or not it exists
12 in fact.” Wash. Rev. Code § 49.60.040(7).
13

14 135. Disability is also an impairment that “affects one or more of the ... body
15 systems.” Wash. Rev. Code § 49.60.040(7)(c)(i).
16

17 136. The legislature intended to adopt a broad and expansive definition of
18 “disability” to protect against discrimination. *Taylor*, 193 Wash.2d at
19 618.
20

21 137. The EEOC has interpreted these rules to include protection for an actual
22 or perceived immunological condition.
23

24 138. WLAD’s definition of disability is broader than the definition in the
ADA. *Pulcino v. Fed. Express Corp.*, 141 Wash.2d 629, 641 n.3 (2000).
25

1 139. Defendants perceived Plaintiffs as having an impairment and/or
2 disability that identified them as presenting a “significant risk of harm.”
3
4 140. Defendants acted believing Plaintiffs have a perceived physical
5 disability of not having the best protection against COVID-19 in their
6 bodies that conflicted with a stated job requirement defined by
7 Defendants’ vaccine mandate.
8
9 141. Defendants were aware of this conflict but did not explore any available
10 reasonable alternatives for accommodating Plaintiffs to resolve the
11 conflict. *Suarez v. State*, 2022 WL 4351109 (September 20, 2022).
12
13 142. Defendants refused to consider or explore accommodations and refused
14 to balance the undue hardships to the citizens of Washington State, the
15 environment, and the mission of the agency.
16
17 143. Defendants terminated Plaintiffs due to their perceived physical
18 disability.
19
20 144. Defendants’ actions caused Plaintiffs to suffer damages to be proven at
21 trial, such actions being the actual and proximate cause of those
22 damages.
23
24

**SECOND CAUSE OF ACTION
Deprivation of Privacy, WA Const. Art. I, Sec. 7**

1 145. Plaintiffs here reallege the allegations set forth above in this Complaint
2 as if fully set forth herein.

3 146. No person shall be disturbed in his private affairs, or his home invaded,
4 without authority of law. Wash. Const. Art. I, § 7.

5 147. This constitutional right to privacy includes the right to autonomous
6 decision-making and autonomy over one's medical care and includes
7 the right to refuse treatment. *See, e.g., In re Welfare of Colyer*, 99
8 Wash.2d 114, 119-22, 660 P.2d 738 (1983); *see also* Wash. Rev. Code
9 § 7.70.050.

10 148. Bodily autonomy is a critical component of the constitutional right of
11 privacy.

12 149. The decision to suffer the battery of a vaccination is also a private affair
13 which further impacts a citizen's bodily integrity.

14 150. The Washington State privacy protections under Art. I, § 7, are broader
15 than the privacy rights under the U.S. Constitution's Fourth
16 Amendment, as Section 7 guarantees, "an individual's right to privacy
17 with no express limitations." *Robinson v. City of Seattle*, 102 Wash.
18 App. 795 (2000) (emphasis added).

19 151. Plaintiffs have the right to make the decision whether to receive a
20 COVID-19 vaccine and have the right to decide not to disclose their
21

1 personal medical history – including whether they have been “fully
2 vaccinated” for COVID-19.

3 152. Despite these rights, Defendants will continue to violate the privacy
4 rights of every individual seeking employment with WDFW.

5 153. Despite these rights, Defendants will continue to refuse reemployment
6 to Plaintiffs.

7 154. Plaintiffs have been deprived of their rights to privacy by the actions of
8 Defendants in forcing Plaintiffs to violate their religious and/or medical
9 freedoms or suffer loss of employment and loss of pension.

10 155. The right to privacy is protected under Wash. Const. Art. I, § 7, as a
11 fundamental right which can only be infringed upon by a law which
12 satisfies a strict scrutiny analysis, that is, which furthers a compelling
13 state interest and is narrowly tailored thereto, using the least restrictive
14 means.

15 156. Defendants demanded termination of religious and medical objectors
16 who did not vaccinate, alleged in the interest of stopping the spread of
17 COVID-19.

18 157. However, the vaccines did not stop infection or transmission, and both
19 the vaccinated and unvaccinated spread COVID-19.

1 158. The termination of religious and/or medical objectors did not further
2 the alleged state interest because the efficacy of the vaccines failed.
3 Defendants knew at the time of the termination that the vaccine was
4 failing, but Defendants purposefully chose to continue with the
5 wrongful termination of religious and medical objectors.
6

7 159. Even if the vaccines had worked as promoted, the Defendants failed to
8 utilize a narrowly tailored method to control the spread of virus, leaping
9 directly to termination without considering lesser available means of
10 achieving the alleged objective.
11

12 160. Defendants failed to utilize PPE, testing, telework, or natural immunity
13 in stopping the spread of COVID-19, and the method they relied upon
14 – vaccination only – did nothing to stop the spread of the virus, as
15 evidenced by a “cleansed” workforce with high breakthrough numbers
16 of fully vaccinated contracting the virus.
17

18 161. Defendants’ actions fail strict scrutiny.
19

20 162. Defendants’ actions would fail even rational-basis review.
21

22 163. Additionally, Plaintiffs have been deprived of their right to privacy
23 through the invasive nature of the religious exemption questionnaire
24 which Defendants required them to answer.

1 164. Defendants' actions proximately caused Plaintiffs to suffer damages in
2 amounts to be proven at trial.

3 **THIRD CAUSE OF ACTION**
4 **Deprivation of Life, Liberty, or Property, U.S. Const. Am. V., Am.**
5 **XIV, WA Const. Art. I, Sec. 3.**

6 165. Plaintiffs here reallege the allegations set forth above in this Complaint
7 as if fully set forth herein.

8 166. No person shall be deprived of life, liberty, or property, without due
9 process of law. U.S. Const. Ams. V, XIV; Wash. Constitution,
10 Art. I, § 3.

11 167. Plaintiffs suffered loss of pension rights and benefits as a direct result
12 of the actions of Defendants.

13 168. Plaintiffs lost title to their real property due to Defendants' actions, had
14 to relocate at considerable loss in the sale of that property, which are
15 losses which they cannot recover.

16 169. Public employees have a property interest in their pensions, which
17 cannot be unilaterally altered to the material disadvantage of the
18 employee. *Eagan v. Spellman*, 90 Wash.2d 248 (1978).

19 210. Public employees have a property interest in their employment, cannot
20 be terminated without "just cause," and cannot be terminated without
22 due process, which includes a fair hearing. *Board of Regents v. Roth*,
23
24

1 408 U.S. at 564 (1972); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S.
2 532, 105 (1985).

3 171. Plaintiffs were terminated from public employment without a hearing
4 or other due process.

5 172. The law regarding due process in employment is well established.

6 173. Defendants knew the Fourteenth Amendment prohibits government
7 from denying an employee due process.

8 174. Defendants' actions proximately caused Plaintiffs to suffer damages in
9 amounts to be proven at trial.

10
11 **FOURTH CAUSE OF ACTION**
12 **Violation of the Equal Protection Clause of the WA Const. Art. I,**
13 **Sec. 3**

14 175. Plaintiffs here reallege the allegations set forth above in this Complaint
15 as if fully set forth herein.

16 176. Wash. Const. Art. I, § 3, states that “[n]o person shall be deprived of
17 life, liberty, or property, without due process of law.”

18 177. If a law neither burdens a fundamental right nor targets a suspect class,
19 it will be upheld so long as it bears a rational relation to some legitimate
20 end. *Romer v. Evans*, 517 U.S. 620, 631 (1996).

21 178. There was no rational relation to some legitimate government end
22 because the action taken – termination of the unvaccinated – did not
23

further the interest of reducing the spread of COVID-19 given that the vaccinated and the unvaccinated both contract and transmit COVID-19.

179. In fact, people who are vaccinated for COVID-19 are more likely to become infected with and spread COVID-19 than are people who have recovered from COVID-19 and have natural immunity.

180. Defendants have treated different classes of people unequally, with the protected class of religious objectors not coincidentally were adversely impacted by the actions of Defendants.

181. The actions of Defendants, on its face and as applied, was not rationally related to a legitimate end.

182. The actions of Defendant have caused, is causing, and will continue to cause irreparable harm and actual and undue hardship to Plaintiffs.

183. Defendants' actions caused Plaintiffs to suffer damages to be proven at trial, such actions being the actual and proximate cause of those damages.

FIFTH CAUSE OF ACTION

Deprivation of Religious Freedom, WA Const. Art. I, Sec. 11.

184. Plaintiffs here reallege the allegations set forth above in this Complaint as if fully set forth herein.

1 185. Defendants' vaccination mandate and religious exemption
2 questionnaire are contrary to and transgress Wash. Const. Art I, § 11,
3 which states, "Absolute freedom of conscience in all matters of
4 religious sentiment, belief and worship, shall be guaranteed to every
5 individual, and no one shall be molested or disturbed in person or
6 property on account of religion...No religious qualification shall be
7 required for any public office or employment."

8 186. Plaintiffs' absolute right to religious freedom has been infringed.

9 187. Defendants, by their conduct and words, discriminated against the
10 Plaintiffs for acting according to their conscience, guided by their
11 religious faith, in refusing to be vaccinated.

12 188. Defendants' vaccination mandate, in conjunction with their religious
13 exemption questionnaire, by design and intent, impose a religious
14 qualification for public employment, and deny Plaintiffs' absolute
15 freedom of conscience in all matters of religious sentiment, belief and
16 worship, and result in an unauthorized molestation or disturbance of the
17 Plaintiffs' persons and property rights on account of religion.

18 189. Defendants' actions proximately caused Plaintiffs to suffer damages in
19 amounts to be proven at trial.

20

21

22

23 **SIXTH CAUSE OF ACTION**
24 **Wage Theft**

1 190. Plaintiffs here reallege the allegations set forth above in this Complaint

2 191. Defendants have, willfully and with the intent to deprive, failed to pay
3 wages to the Plaintiffs since the date of their respective terminations.

4 192. Defendants had a pre-existing duty under contract to pay Plaintiffs the
5 specific compensation as set forth in their employment contracts.

6 193. Defendants were aware at the time of termination that Plaintiffs were
7 being treated differently than secular and non-medical objectors by
8 requiring religious and medical objectors to receive a vaccine to prevent
9 infection, knowing that both the vaccinated and the unvaccinated both
10 contracted and spread the COVID-19 virus equally, and affirmatively
11 elected to ignore the established science.

12 194. Defendants have authority and control over the employment status and
13 payment of wages to Plaintiffs.

14 195. Plaintiffs did not knowingly submit to the deprivation of wages.

15 196. Defendants' actions proximately caused Plaintiffs to suffer damages in
16 amounts to be proven at trial, including at least lost wages and lost
17 benefits, including pensions.

18 197. Defendants' actions are the actual and proximate cause of Plaintiffs'
19 damages.

1 198. Plaintiffs not yet reinstated are entitled to back wages, and for all
2 Plaintiffs to double damages, costs of suit and reasonable attorney's,
3 Wash. Rev. Code § 49.52.070.

4

5 **SEVENTH CAUSE OF ACTION**
6 **Breach of Contract**

7 199. Plaintiffs here reallege the allegations set forth above in this Complaint.

8 200. There existed a binding contract between each Plaintiff and the
9 Department that permitted termination only for "just cause."

10 201. Each Plaintiffs substantially performed their obligations under this
11 contract.

12 202. The Department breached its contracts with Plaintiffs by terminating
13 them without just cause.

14 203. Defendants' wrongful termination of Plaintiffs was based on a new
15 condition of employment that was not part of Plaintiffs' contract when
16 hired.

17 204. Defendants' actions violated Plaintiffs' right to continued employment
18 by terminating them without "just cause" and by adding a new
19 condition to employment – vaccination –without consideration.

20 205. Defendants' action also violated Plaintiffs' pension rights, likewise
21 established by contract.

1 206. Defendants' actions caused a substantial change to the pension rights
2 of Plaintiffs established by Wash. Rev. Code Title 41 *et. seq.*

3 207. Plaintiffs have suffered extraordinary financial loss because of the
4 substantial change in their pension rights without cause.

5 208. Defendants' actions proximately caused Plaintiffs to suffer damages in
6 amounts to be proven at trial, including at least lost wages and lost
7 pensions.

9 **EIGHTH CAUSE OF ACTION**
10 **VIOLATION OF THE WASHINGTON LAW AGAINST**
11 **DISCRIMINATION**
Failure to Accommodate

12 209. Plaintiffs here reallege the allegations set forth above in this Complaint.

13 210. Each Plaintiff was found by the Department to have a sincerely held
14 religious belief preventing vaccination and was granted an exemption,
15 and/or was granted a medical exemption preventing vaccination due to
16 a medical condition.

17 211. Defendants were aware of these exemptions.

18 212. Plaintiffs made repeated requests for accommodations but were shut
19 down without discussion.

20 213. Defendants failed to consider any of the accommodations proposed by
21 Plaintiffs.

214. Defendant stated that reassignment was the only possible accommodation, but then universally denied reassignment to terminated employees.

215. Plaintiffs were forced to either (a) disregard their sincerely held religious beliefs, and/or put their health at risk, or (b) lose their positions, seniority, pensions, professions, and livelihoods.

216. Plaintiffs were forced to either be terminated or take a vaccine in direct violation of their sincerely held religious beliefs in order to feed their families.

217. Strict scrutiny applies where fundamental rights are concerned.

218. Where the mandated vaccine does not prevent infection or transmission, Defendants' actions, *and the continuance thereof*, are arbitrary and capricious and fail even a rational basis review.

219. Defendants' actions proximately caused Plaintiffs to suffer damages in amounts to be proven at trial.

NINTH CAUSE OF ACTION
VIOLATION OF THE WASHINGTON LAW AGAINST
DISCRIMINATION
Disparate Impact

220. Plaintiffs here reallege the allegations set forth above in this Complaint.

221. To the extent that Defendants' policy is facially neutral, it falls more harshly upon those within a protected class.

1 222. The Plaintiffs have been damaged by the disparate impact of the
2 Defendants' policy.

3 223. Defendants' actions proximately caused Plaintiffs to suffer damages in
4 amounts to be proven at trial.

5

6 **TENTH CAUSE OF ACTION**
7 **VIOLATION OF THE FIRST AMENDMENT OF THE UNITED**
8 **STATES CONSTITUTION –**
9 **Free Exercise**

10 224. Plaintiffs here reallege the allegations set forth above in this Complaint.

11 225. All the acts of Defendants were conducted by them under color and
12 pretense of the statutes, regulations, customs, policies, and/or usages of
13 the State of Washington and the Washington Department of Fish and
14 Wildlife.

15 226. The law regarding the free exercise of religion and employment is well
16 established.

17 227. The law regarding due process in employment is well established.

18 228. Defendants Susewind and Windrope knew that the First Amendment
19 prohibits governmental officials from demonstrating hostility to
20 religion or prohibiting the free exercise thereof.

21 229. Defendants Susewind and Windrope acted with willful malice, and/or
22 intentionally and in gross disregard of Plaintiffs' constitutional rights,
23 and/or in reckless disregard of Plaintiffs' constitutional rights.

1 230. As a direct and proximate result of Defendants' Susewind and
2 Windrope's actions, Plaintiffs have been deprived of their
3 constitutional rights to the free exercise of religion and to be free from
4 governmental hostility directed at their religion and have been denied
5 their rights to due process and equal protection under the law.
6

7 231. Defendant's actions proximately caused Plaintiffs to suffer damages in
8 amounts to be proven at trial.

9 **ELEVENTH CAUSE OF ACTION**
10 **RELIGIOUS DISCRIMINATION –**
11 **42 U.S.C. §2000e-2(a)(1)**

12 232. Plaintiffs here reallege the allegations set forth above in this Complaint.

13 233. Title VII of the Civil Rights Act of 1964 prohibits Defendants from
14 discriminating against employees based on their sincerely held religious
15 beliefs. *See* 42 U.S.C. § 2000e-2(a).

16 234. Plaintiffs each hold sincere religious beliefs that precluded them from
17 receiving any of the COVID-19 vaccines available.

18 235. Plaintiffs each notified defendants of those beliefs by requesting a religious
19 exemption and reasonable accommodation from the vaccine mandate.

20 236. Defendants determined that each Plaintiff had a sincerely held religious
21 beliefs that precluded them from taking the vaccine and notified each Plaintiff
22 of that decision granting them religious exemptions.
23

1 237. The Department determined that at least 3 of the Plaintiffs, utilizing PPE,
2 could be accommodated for their sincerely held religious beliefs utilizing
3 PPE.

4 238. The Department, and Defendants Windrope and Susewind, thereafter
5 withdrew that determination and refused to provide accommodation to their
6 sincerely held religious beliefs.

7 239. The Department, Susewind and Windrope specifically withdrew
8 accommodations to 13 exempt employees, some of whom are not currently
9 Plaintiffs.

10 240. The Defendants then failed to engage with the Plaintiffs in an interactive
11 process as set forth in the EEOC's Compliance Manual on Religious
12 Discrimination before concluding that it would not accommodate any of the
13 Plaintiffs for their sincerely held religious beliefs.

14 241. Accommodating the Plaintiffs' religious beliefs would not have resulted in
15 any undue hardship to the Department.

16 242. Defendant's discriminatory actions were intentional and/or reckless and in
17 violation of Title VII.

18 243. Defendants' actions proximately caused Plaintiffs to suffer damages in
19 amounts to be proven at trial.

20
21
22
23 **INJUNCTION AGAINST FUTURE RETALIATION**
24

1 244. Plaintiffs here reallege the allegations set forth above in this Complaint.

2 245. Plaintiffs have the right to be free from discriminatory retaliation for activity

3 statutorily protected activity under Title VII and WLAD, Wash. Rev. Code

4 Ann. § 49.060.010 *et. seq.*

5 246. Plaintiffs have a fundamental right to be free from a hostile work environment

6 because of their religious beliefs and/or their actions taken in response to an

7 adverse employment action or other statutorily protected activity.

8 247. Plaintiffs have a right to be free from “disparate treatment” compared to those

9 who do not share their religious beliefs.

10 248. Plaintiff Shirley has experienced numerous acts of harassment, retaliation, and

11 disparate treatment because of her adverse employment action that required

12 Defendants to reinstate her to her former position with backpay.

13 249. The Court should ENJOIN Defendants from harassment, retaliation, and

14 disparate treatments against Ms. Shirley, specifically, and other Plaintiffs not

15 yet to be reinstated generally.

16 **VI. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs, and each of them, pray for the following relief

18 against the Defendants:

19 22 1. Judgment against all Defendants on all claims.

- 1 2. Money judgment for back pay and front pay, loss of benefits, and loss of
- 2 pension rights, for those Plaintiffs who were terminated or forced to quit.
- 3 3. Money judgment for back pay, loss of benefits, and loss of pension rights,
- 4 for those two reinstated Plaintiffs, to the extent they are reinstated.
- 5 4. Double damages for lost wages pursuant to Wash. Rev. Code § 49.52.070.
- 6 5. Money judgment for all Plaintiffs pursuant to the infringement upon their
- 7 constitutional and statutory rights.
- 8 6. Attorney fees as authorized by State and Federal statute.
- 9 7. Such other and further relief that is just and equitable.

11 Dated: January 30th, 2023.

12 **ARNOLD & JACOBOWITZ PLLC**

14 /s/ Nathan J. Arnold

15 Nathan J. Arnold, WSBA No. 45356
16 8201 164th Ave. NE, Suite 200
17 Redmond, WA 98052
18 Nathan@CAJlawyers.com
19 (206)799-4221
20 *Counsel for Plaintiffs*